

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

vs.

CRIMINAL ACTION No.: 3:15-CR-45-HTW-FKB

DAVID SMITH-GARCIA

ORDER

BEFORE THIS COURT is defendant's *pro se* Motion for Recusal of Judge Henry T. Wingate [**Docket no. 381**]. Defendant is currently represented by counsel, Wayne Milner. A criminal defendant does not have the right to "hybrid representation." *United States v. Lopez*, 313 F. App'x 730, 731 (5th Cir. 2009) (Citing *United States v. Ogbonna*, 184 F.3d 447, 449 & n. 1 (5th Cir.1999)).

Further, this court finds that motion should be stricken from the record. *See e.g. United States v. Long*, 597 F.3d 720, 728 (5th Cir. 2010)(finding that the trial court properly struck the defendant's *pro se* motion because it had been filed at a time when he was represented by counsel); *United States v. Alvarado*, 321 F.App'x 399, 400 (5th Cir. 2009)(finding that because the defendant "was represented by counsel in the district court, he was not entitled to file a *pro se* motion on his own behalf.")).

IT IS, THEREFORE, ORDERED that the defendant's *pro se* Motion for Recusal of Judge Henry T. Wingate [Docket no. 381] is hereby DENIED WITHOUT PREJUDICE and STRIKEN.

IT IS FURTHER ORDERED that defendant's *pro se* Motion for Recusal of Judge Henry T. Wingate [Docket no. 381] shall be SEALED to preserve such for appeal, if necessary.

IT IS FINALLY ORDERED that defendant's attorney of record, Wayne Milner, may investigate and file a Motion to Recuse if, after investigation, he finds it to be appropriate.

SO ORDERED this the 11th day of August, 2021.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE